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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44062
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2015-18368
)	
MALINA KAE CHAVEZ,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Chavez failed to establish that the district court abused its discretion by imposing a unified sentence of seven years, with two years fixed, upon her guilty plea to felony possession of a controlled substance?

Chavez Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Chavez pled guilty to felony possession of a controlled substance (Hydrocodone) and the district court imposed a unified sentence of seven years, with

two years fixed. (R., pp.16-17, 38-40.) Chavez filed a notice of appeal timely from the judgment of conviction. (R., pp.34-36.)

Chavez asserts her sentence is excessive in light of her mental health issues, substance abuse, and difficult childhood. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for felony possession of a controlled substance (Hydrocodone) is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with two years fixed, which falls well within the statutory guidelines. (R., pp.38-40.) At sentencing, the state addressed Chavez's ongoing substance abuse and criminal offending, her refusal to abide by the terms of

probation and parole, and her failure to rehabilitate or be deterred despite numerous prior treatment opportunities and legal sanctions. (3/21/16 Tr., p.6, L.14 – p.8, L.1 (Appendix A).) The district court subsequently articulated its reasons for imposing Chavez’s sentence. (3/21/16 Tr., p.11, L.7 – p.13, L.11 (Appendix B).) The state submits that Chavez has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Conclusion

The state respectfully requests this Court to affirm Chavez’s conviction and sentence.

DATED this 8th day of November, 2016.

/s/
KENNETH K. JORGENSEN
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 8th day of November, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
KENNETH K. JORGENSEN
Deputy Attorney General

APPENDIX A

<p style="text-align: center;">5</p> <p>1 BOISE, IDAHO</p> <p>2 Monday, March 21, 2016, 3:35 p.m.</p> <p>3</p> <p>4 THE COURT: I will take up State v. Melina</p> <p>5 Chavez. Is the State ready to proceed?</p> <p>6 MR. BLEAZARD: Yes, Your Honor.</p> <p>7 THE COURT: Is the Defense?</p> <p>8 MR. STEVELEY: We are, judge.</p> <p>9 THE COURT: Okay. Well, this case came</p> <p>10 before the Court for arraignment. The defendant</p> <p>11 was arraigned. She was advised of the nature of</p> <p>12 the charges, also of her rights, including her</p> <p>13 right to plead not guilty, have a jury trial, to</p> <p>14 confront and cross-examine witnesses against her,</p> <p>15 to put on evidence if she wanted to and to</p> <p>16 exercise the privilege against self-incrimination.</p> <p>17 She was told that she would give up</p> <p>18 those rights along with her defenses if she pled</p> <p>19 guilty. She did plead guilty in this case to</p> <p>20 count two. Count one was to be dismissed. State</p> <p>21 was going to recommend a sentence of two years</p> <p>22 fixed followed by five years indeterminate for a</p> <p>23 seven years sentence to be imposed. The Defense</p> <p>24 was free to argue for less.</p> <p>25 Well, we talked about it. It was a</p>	<p style="text-align: center;">7</p> <p>1 Her prior felony comes out of</p> <p>2 Bonneville where she was convicted of possession</p> <p>3 of controlled substance with intent to manufacture</p> <p>4 or deliver, 2011. She has violated probation in</p> <p>5 that case two different times. She did a rider</p> <p>6 back in 2011 and was ultimately sentenced to</p> <p>7 prison. Served a prison term. She was out on</p> <p>8 parole when this case happened.</p> <p>9 Your Honor, I've given some thought to</p> <p>10 what I might recommend to this Court in terms of</p> <p>11 what could possibly be done, some other means by</p> <p>12 which the defendant could be handled by this Court</p> <p>13 so as to enable her to be back in the community at</p> <p>14 some point, perhaps another rider or something</p> <p>15 like that, or some sort of specialty court. She</p> <p>16 did indicate that she had an interest in mental</p> <p>17 health court.</p> <p>18 But the history and the way that she</p> <p>19 presents to the Court, I think really disqualifies</p> <p>20 her for that. She has shown time and time again</p> <p>21 that she is not willing to rehabilitate. She has</p> <p>22 had made many opportunities of probation. And she</p> <p>23 just simply isn't willing to change and conform</p> <p>24 her behavior. For that reason, Your Honor, I see</p> <p>25 no other outcome here besides imposition of</p>
<p style="text-align: center;">6</p> <p>1 valid plea. I did take up -- I did get the</p> <p>2 presentence materials. Are there changes or</p> <p>3 corrections?</p> <p>4 MR. BLEAZARD: None by the State, Your</p> <p>5 Honor.</p> <p>6 MR. STEVELEY: No, Your Honor.</p> <p>7 THE COURT: Okay. Will there be testimony</p> <p>8 today?</p> <p>9 MR. BLEAZARD: No. Thank you.</p> <p>10 THE COURT: All right. Well, I would like</p> <p>11 to hear the State's recommendation first.</p> <p>12 MR. BLEAZARD: Your Honor, the State has a</p> <p>13 restitution request in the amount of \$303.00.</p> <p>14 Your Honor, the recommendation in this</p> <p>15 case is two years fixed with five years</p> <p>16 indeterminate for a total of seven. That sentence</p> <p>17 be imposed. Your Honor, this case clearly</p> <p>18 demonstrates the defendant's history and</p> <p>19 propensity to being a thief and certainly also</p> <p>20 despite the fact that she is a drug addict.</p> <p>21 She has had a very serious problems</p> <p>22 with the law basically since 2010. She has racked</p> <p>23 up significant number of misdemeanor offenses in</p> <p>24 multiple counties throughout Idaho. I counted</p> <p>25 four different counties besides Ada County.</p>	<p style="text-align: center;">8</p> <p>1 sentence. Thank you.</p> <p>2 THE COURT: Okay. Comments.</p> <p>3 MR. STEVELEY: Yes, Judge. Judge, she comes</p> <p>4 to you as you are aware with a really tough</p> <p>5 background including sexual abuse and emotional</p> <p>6 abuse. She did previously successfully complete a</p> <p>7 rider once. She also failed on one, I believe.</p> <p>8 She is a high school graduate. She</p> <p>9 previously pursued some beauty school licensing</p> <p>10 for fingernail work through Vogue Beauty College</p> <p>11 in Idaho Falls. She does have job skills as a</p> <p>12 waitress, a cashier, a bartender and a baker.</p> <p>13 She has been previously diagnosed with</p> <p>14 anxiety and depression. She received drug and</p> <p>15 alcohol counseling through Pathways previously in</p> <p>16 addition to what she did on her first rider.</p> <p>17 She acknowledges that she had used</p> <p>18 drugs to self-medicate and clearly has substance</p> <p>19 abuse issues. And I thought she gave what I think</p> <p>20 was a very thoughtful self analysis of her</p> <p>21 substance abuse and mental health issues on page</p> <p>22 16 of the presentence report.</p> <p>23 She says in there that in her fear --</p> <p>24 from her mental health issues and her fear of</p> <p>25 turning out like her mother, she has followed in</p>

Nicole L. Julson, Official Court Reporter, Ada County, Idaho

APPENDIX B

<p style="text-align: center;">9</p> <p>1 her shoes of self-medication and avoiding real 2 life. And truly does want help for that. I 3 thought she -- she has obviously been in custody 4 for a while and I think she has given this a fair 5 amount of thought to where she is at and where her 6 life is going.</p> <p>7 She has applied for and been accepted 8 to Rising Sun clean and sober living home if the 9 Court were to release her. We had her screened 10 for mental health court as you are aware, Judge, 11 and unfortunately since she was on parole, they 12 can't accept her. I think otherwise though that 13 would have been our preference for the best 14 possible treatment that would address both of her 15 substance abuse issues as well as mental health 16 issues.</p> <p>17 She believes, Judge, that the masking 18 of her mental health issues is really at the root 19 of her drug abuse or at least precipitator of her 20 drug abuse. And unfortunately even with a lot of 21 treatment for her drug issues, she hasn't been 22 able to overcome as of yet.</p> <p>23 But we are asking the Court to still 24 fashion a sentence that still focuses for the most 25 part on rehabilitation for those issues. Less so</p>	<p style="text-align: center;">11</p> <p>1 feel like with the resources available here, I can 2 thrive and I can be productive and I can be 3 successful. I know that I can.</p> <p>4 THE COURT: Is there a legal cause why we 5 should not proceed?</p> <p>6 MR. STEVELEY: None known, Judge.</p> <p>7 THE COURT: Well, I looked at your past 8 record and I also looked at really how 9 long-standing your problems with drugs and the 10 kind of various drugs it has been. And in this 11 particular case you went to Dillards and took 12 about \$700 worth of merchandise. Found a used 13 meth pipe, 20 hydrocodone pills. You were on 14 parole when this happened.</p> <p>15 You had two riders as counsel says. 16 One that resulted in some probation for a while. 17 And then the other with relinquishment. And so, 18 you know, that is not a record of successfully 19 moving forward in a more positive way.</p> <p>20 And what really concerns me is that 21 when you were paroled you got to go -- they had 22 you at the Ruth House and you left that. You left 23 that in June or because -- well, left, 24 discontinued, got kicked out because you were 25 leaving the property on curfew four times in one</p>
<p style="text-align: center;">10</p> <p>1 on punishment. With that, I will leave it in your 2 discretion.</p> <p>3 THE COURT: Ms. Chavez, your comments?</p> <p>4 THE DEFENDANT: Yeah, I would like to say I 5 know that I have been given previous chances and 6 I've failed. I wouldn't say -- I didn't throw 7 them away. I did fail, but I am willing to get 8 back up and try again. And like I said, like, I 9 am in a new environment now. I kept failing 10 because I kept going to back to the same 11 playground, same area, expecting different 12 results, not seeking out mental health and 13 avoiding the root of my problems. And I've also 14 contacted Ascent for outpatient treatment also. I 15 forgot to tell you that.</p> <p>16 I just really ask that you give me a 17 chance in a new community with new resources to 18 actually better myself and get the help that I 19 need where -- I mean, the community that I came 20 from before didn't have the resources that you 21 guys, you know, that Ada County does. And I was 22 falling between the cracks drastically. I 23 couldn't get help because I wasn't crazy enough, 24 but I couldn't function. And it was -- I mean, it 25 is ultimately my fault for relapsing, but I just</p>	<p style="text-align: center;">12</p> <p>1 week and they found three methamphetamine pipes 2 residue and baggies during a search of your room. 3 And then this offense occurs a few months later.</p> <p>4 I think what this is showing is a 5 person with an out of control addiction. And the 6 past efforts haven't been successful in the 7 community. The fact that you walked away. Well, 8 walked away or failed the treatment program 9 because you were continuing to use drugs really 10 supports an argument that you need to have a 11 longer time of sobriety before you are likely to 12 be more successful.</p> <p>13 I think you have got some good ideas of 14 thinking maybe a different place could give you 15 some edge. But I also think that nothing about 16 what I see so far indicates somebody who is really 17 wanting to stop using drugs. And that may well be 18 because the pull of the addiction is quite strong. 19 But I think that it is going to require treatment 20 in a more structured setting.</p> <p>21 So I am going to impose a sentence of 22 two years fixed followed by five years 23 indeterminate for a seven year sentence. I am 24 going to recommend that you receive ongoing 25 substance abuse and mental health treatment. I am</p>

13

1 not retaining jurisdiction. I am going to
2 recommend that specifically. I think that's what
3 may help you. But honestly I think you are so
4 addicted that you are going to need some time to
5 stay away from that.

6 I am also a little bit concerned about
7 the effect of the pending warrant out of
8 Bonneville County. Because pending legal issues
9 in Bonneville are likely to really impair our
10 ability to do much here and that's also entering a
11 little bit into my assessment. You do have 42
12 days in which to appeal.

13 I will allow the \$100 restitution for
14 the drug donation account. As to the rest I think
15 that it is not in the long term interest of
16 society to burden people with enormous debt when
17 they have very little work history -- and although
18 that is a couple hundred more -- when people can
19 only get minimum wage job a couple hundred more
20 means a lot. I am not going to order the
21 additional cost of prosecution. I am just going
22 to order the drug lab testing.

23 (Proceedings concluded 3:48 p.m.)
24
25

14

1 CERTIFICATE OF REPORTER

2 STATE OF IDAHO)
3) ss.
4 COUNTY OF ADA)
5

6 I, NICOLE L. JULSON, Official Court
7 Reporter of the County of Ada, hereby certify:

8 That I attended the hearing in the
9 above-entitled matter and reported in stenograph
10 the proceedings had thereat: That I thereafter,
11 from the shorthand record made by me at said
12 proceedings; that the foregoing 13 pages
13 constitutes said transcript and that said
14 transcript contains a full, true, complete and
15 correct transcript of said proceedings.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand this 6th day of May, 2016.
18
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20
21
22
23
24
25

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